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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

RONALD J. WOJTAS, a minor, by his next friend, JOHN C. WOJTAS, RALPH JOSEPH SCHULTE, a minor, by his next friend, WILLIAM SCHULTE, JOHN C. WOJTAS and SOPHIE WOJTAS,

Petitioners,

vs.

VILLAGE OF NILES, a Municipal Corporation of the State of Illinois,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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No.

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VILLAGE OF NILES, a Municipal Corporation of the State of Illinois,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled case on July 6, 1964.

CITATION TO OPINION BELOW.

The District Court filed no opinion in this case. Its final judgment order is printed in Appendix B hereto. The opinion of the Court of Appeals, printed in Appendix B hereto, is reported in 334 F. 2d 797.

JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit was entered on July 6, 1964. A timely petition for rehearing, filed on July 16, 1964, was denied on July 23, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE AND RULE INVOLVED.

Illinois Revised Statutes 1963, Chapter 24, § 1-4-6, and Rule 18(b) of the Federal Rules of Civil Procedure (text of both set forth verbatim in Appendix A hereto).

QUESTIONS PRESENTED.

1. Does a District Court have pendent jurisdiction over counts asserting claims arising under state law when such counts are based on identical facts, and are joined in the same complaint, with counts asserting claims arising under the federal Civil Rights Act?

2. Does a District Court have pendent jurisdiction over a municipal corporation on claims arising under state law and upon which the municipal corporation would be a proper party under state law, when such state claims are based upon identical facts, and are joined, with claims under the federal Civil Rights Act brought against police officers who were acting on behalf of the municipal corporation?

STATEMENT OF THE CASE.

The petitioners filed their complaint in the District Court for the Northern District of Illinois. Counts One and Two of the complaint are claims for damages under the federal Civil Rights Act (42 U.S.C. § 1983, 1985, and 1986) brought against police officers of the Village of Niles, a municipal corporation of the State of Illinois.

The District Court had jurisdiction of these counts by reason of 28 U.S.C. § 1343 and the statutes cited in the preceding sentence. R.5. The respondent Village is *not* a defendant upon these counts.

Counts Three, Four, and Five are claims for damages under *state law* for false arrest and imprisonment, malicious prosecution, and assault. The District Court's jurisdiction over these counts is based on the doctrine of pendent jurisdiction because the federal and state claims are grounded upon identical facts, and also upon Rule 18(b) of the Federal Rules of Civil Procedure. R. 5-6. Damages are sought against all defendants, *including the Village*, upon these three counts.

Count Six is a claim for injunction against all defendants, including the Village, under the Civil Rights Act. The individual defendants filed answers to the merits on all counts, and the Village joined in this answer as to Count Six only.

The Village alone moved to dismiss Counts Three, Four, and Five for lack of jurisdiction. R. 29. The District Court, in a final judgment order, entered pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, dismissed Counts Three, Four and Five only as to the Village "on the grounds that this court has no jurisdiction . . ." R. 30, Appendix B hereto. The action is awaiting trial on the merits (except as to the parts of the complaint at issue upon this petition) in the District Court.

Upon appeal, the Court of Appeals for the Seventh Circuit not only affirmed the dismissal order, but held further that there was no jurisdiction over *any defendant* as to Counts Three, Four and Five. 334 F. 2d 797, Appendix B hereto. A timely petition for rehearing was filed and denied.

The complaint alleges as follows:

> The plaintiffs and their parents, all residents of Niles, are persons of good reputation, none of whom has ever been arrested or charged with unlawful conduct, except for minor traffic matters and the incidents set forth in the complaint. R. 6.
>
> The actions of the individual defendants complained of were committed under color of law and within the course of their duties as policemen of the Village of Niles, and were ratified by the said Village. R. 6, 17-18.
>
> On the evening of February 24, 1962, the defendant policemen unlawfully arrested, beat, threatened, and imprisoned the minor plaintiffs R. 7-9.
>
> These defendants then held the plaintiffs at the Niles police station and refused to allow them to call their parents; the parents, terrified by the absence of their sons, came to the station and found them at about 4:00 a.m. the following morning, but the plaintiff Ronald Wojtas was forced to remain in jail until 9:00 a.m. because unreasonable bail was set. R. 9-10.
>
> These defendants then knowingly filed with the magistrate's court false charges of loitering and refusing to obey a policeman against the plaintiffs; on November 30, 1962, a jury found the plaintiffs not guilty on these charges, and the plaintiffs were thereupon discharged. R. 10-11.

The allegedly unlawful conduct of the defendants is set forth only once, under Count One, and is then realleged as to the succeeding four counts because identical facts underlie the federal claims (Counts One and Two) and the state claims (Counts Three, Four, and Five). The Village is joined as a defendant only upon these state claims, but its unlawful acts for which the plaintiffs seek damages are exactly the same as those set forth in Counts One and Two.

Count Six alleges harassment and arrests of the plaintiffs and their families, and the filing by defendants of additional

false charges, subsequent to the acquittal of the minors. All of the plaintiffs seek upon this count an injunction against further harassment and false prosecutions and arrests by the Village and its policemen. R. 21-25.

REASONS FOR GRANTING THE WRIT.

1. The Decision Below is in conflict with the Controlling Decisions of this Court on the Subject of Pendent Jurisdiction.

In *Hurn* v. *Oursler,* 289 U.S. 238, 246 (1933), this Court held that where a federal copyright claim and a state unfair competition claim were both based on performance of the same play, the trial court had pendent jurisdiction over the state claim since both claims involved "identical facts."

In *Armstrong* v. *Nu-Enamel Corporation,* 305 U.S. 315, 324-325 (1938), this Court held there was pendent jurisdiction over a claim for unfair competition arising under state law because "[t]he facts supporting a suit for infringement [arising under the federal trademark statute] and one for unfair competition are substantially the same."

Thus the decisions of this Court establish that pendent jurisdiction exists over a claim arising under state common law when that claim is based on substantially the same facts, and is joined, with a claim arising under federal statutory law. In the case at bar, the state and federal claims are based *upon identical facts.* The individual defendants filed answers to the merits on all counts and did not move to dismiss.[1] Only the defendant Village (which

[1] We recognize that consent of the individual defendants could not confer jurisdiction which is otherwise lacking. However, we submit it is significant that *none* of the individual defendants challenged the jurisdiction of the District Court over them on Counts Three, Four, and Five, and that the District Court made no ruling on this point.

was not made a defendant on Counts One and Two because of the decision in *Monroe* v. *Pape*, 365 U.S. 167 (1961), that municipal corporations may not be sued for damages under the federal Civil Rights Act) moved to dismiss for lack of jurisdiction. The District Court dismissed Counts Three, Four, and Five only "as to the defendant Village of Niles." R. 30.

The Court of Appeals, however, went farther than the District Court and held that there was *no jurisdiction over any defendant* on Counts Three, Four, and Five:[2]

> "We hold that the mere incorporation of counts Three, Four and Five, based upon Illinois law, in a complaint otherwise based entirely upon alleged violations of a federal statute and the fourteenth amendment to the constitution of the United States, does not give the district court jurisdiction of those three counts." 334 F. 2d at 799.

Thus the decision below, in holding that a federal District Court has no jurisdiction over state claims based on facts identical with those asserted in federal claims, is in conflict with *Hurn* v. *Oursler*, and *Armstrong* v. *Nu-Enamel Corporation, supra*, the controlling decisions of this Court on the subject of pendent jurisdiction. The opinion of the Court below recites familiar quotations from the *Hurn* and *Armstrong* cases, but the opinion completely fails to set forth any discussion or reasons showing why these controlling decisions do not allow pendent jurisdiction over the state claims, even though the facts underlying the state and federal claims are *identical*.

---

[2] Point 4 of the affidavit filed in support of our petition for rehearing in the court below questioned whether the opinion really intended to hold "that there is no jurisdiction over the individual policemen charged in these three Counts . . ." The Court denied the petition without comment.

Furthermore, the opinions in *Bell* v. *Hood*, 327 U.S. 678 at 686 (dissenting opinion) (1946), on remand, 71 F. Supp. 813 at 820 (S.D. Cal. 1947), show that on facts like those presented in the instant case, the District Court has pendent jurisdiction over the state claims. Unlike the situation in *Bell* v. *Hood*, our state claims must be heard because they are pendent to federal claims which undeniably present facts on which relief can be granted.

A careful reading of the above decisions illustrates conclusively that there is pendent jurisdiction over the state claims in this matter. This Court should not allow the trial of this action to proceed under the erroneous holding of the court below that the state claims must be tried in a separate action in the state court.

2. The Decision Below is in Conflict with Decisions of other Courts of Appeals.

We have found no reported decision, other than this case, involving a complaint which joins federal Civil Rights Act and state common law claims which are based on the same facts. But several courts of appeals (including the court below) and district courts have held in various contexts that pendent jurisdiction exists over state common law claims based on identical facts, and joined, with federal statutory claims. These decisions may be summarized as follows:

1. *Taussig* v. *Wellington Fund, Inc.*, 313 F. 2d 472, 476 (3d Cir.) cert. den., 374 U.S. 806 (1963)—Held that the "district court had federal question jurisdiction over the cause of action asserted under . . . the Investment Company Act of 1940 and pendent jurisdiction to determine whether the conduct in suit constituted common-law unfair competition."

2. *Errion* v. *Connell*, 236 F. 2d 447, 453 (9th Cir. 1956)—State fraud claim joined with federal claim under Securi-

ties Act based on "single fraudulent scheme arising out of the same set of facts . . .".

3. *Strachman* v. *Palmer*, 177 F. 2d 427, 430 (1st Cir. 1949)—State claim for damages to goods joined with federal claim under The Interstate Commerce Act.

4. *Jung* v. *K & D Mining Co.*, 260 F. 2d 607, 609 (7th Cir. 1958)—Claim under federal Securities Act joined with state claim for fraud arising out of same sale.

5. *United Lens Corporation* v. *Doray Lamp Co.*, 93 F. 2d 969, 974 (7th Cir. 1937)—Claim for breach of contract not to infringe a patent joined with federal claim for infringment.

6. *Caldwell-Clemets, Inc.* v. *McGraw-Hill Publishing Co.*, 12 F.R.D. 403 (S.D. New York 1952) and *Wagner* v. *World-Automobiles Corp.*, 201 F. Supp. 22, 24 (W.D. New York 1961)—State claims for unfair competition joined with federal antitrust claims.

3. The Decision Below is in Conflict with Rule 18(b) of the Federal Rules of Civil Procedure, and Fails to Consider or Even Mention this Rule, Although the Applicability of the Rule was Briefed, Argued, and Set Forth in the Petition for Rehearing.

Rule 18(b) of the Federal Rules of Civil Procedure authorizes joinder of two claims in a single action, even though under state law one of the claims could have been filed only after the other had been prosecuted to judgment. The court below was able to apply this rule correctly in *Huntress* v. *Huntress' Estate*, 235 F. 2d 205 (7th Cir. 1956).

Under section 1-4-6 of Chapter 24 of the Illinois Revised Statutes of 1963,[3] the Village of Niles may be liable to indemnify the defendant policemen, if the plaintiffs recover judgments against them at the trial in the District Court.

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[3] The full text of this statute and of Rule 18(b) are set forth in Appendix A hereto.

In *Karas* v. *Snell*, 11 Ill. 2d 233, 142 N.E. 2d 46 (1957) and in *Richichi* v. *Bielski*, 49 Ill. App. 2d 320, 199 N.E. 2d 652 (1st Dist. 1964), petition for leave to appeal to Supreme Court denied, Sept. 28, 1964,[4] the Illinois courts have held that a person who obtains a judgment against the policeman for injuries inflicted by the policeman must then file a second action against the municipal corporation to compel payment of the judgment by the municipal corporation under the indemnity statute. Since the Village could be sued under state law in a separate action after judgment was recovered herein against the individual defendants, by reason of Rule 18(b) the Village can therefore be joined as a defendant in this action.

What is more distressing to us than having failed to persuade the court below to recognize that under Rule 18(b) the Village may be joined as a defendant herein, is that the Court below completely fails to consider, or even *mention*, this rule in its opinion. The court below ignored Rule 18(b) although the applicability of the rule to this case was explicitly argued at pages 10 and 11 of our brief and upon oral argument. Paragraph 3 of the affidavit filed in support of our petition for rehearing called the attention of the court below to the fact that it had ignored Rule 18(b) and the Illinois indemnity statute. Nevertheless, the court below saw fit to deny the petition for rehearing.

Our claim based on Rule 18(b) can hardly be said not to be worth mentioning, since four judges of the District Court had previously held that in cases like this one the rule allowed municipal corporations to be made defendants.[5]

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[4] Chicago Daily Law Bulletin, Sept. 28, 1964, p. 9.

[5] *Costello* v. *City of Chicago*, No. 60 C 1566, *Duble* v. *Brown*, No. 61 C 1404, *Gonzalez* v. *General Investigations, Inc.*, No. 60 C 1806, *Washington* v. *City of Rockford*, No. 63 C 9. Unfortunately, no opinions were filed.

With deference, we submit that in failing even to mention Rule 18(b) in its opinion, the court below has acted arbitrarily and departed from the accepted and usual course of judicial proceedings.

Furthermore, if the court below is correct, then, by reason of the well known Cook County jury case backlog, the plaintiffs will have to wait at least seven years after they obtain judgments in the federal court to secure a jury trial of their indemnity claim against the municipal corporation in the state court. (The Chicago Daily Law Bulletin of October 8, 1964, shows that jury cases filed in 1957 are only now being called for trial). This delay is a luxury which victims of police brutality can ill afford (see *infra*, footnote 9), and which Rule 18(b) and the doctrine of pendent jurisdictions were fashioned to prevent. It must be remembered that plaintiffs are likely to receive no money until they have secured judgments against the municipal corporation. See, e.g., *Richichi* v. *Bielski*, *supra*, and footnote 6, *infra*.

4. The Question Presented is of Major Importance Because of Its Potential Applicability to Every Complaint for Damages filed under the Civil Rights Act in States Where Municipal Corporations are liable under State Law for the Misconduct of their Policemen.

This Court decided in *Monroe* v. *Pape*, *supra*, that municipal corporations could not be sued for damages under the Civil Rights Act for the misconduct of their policemen. But in a significant and growing number of states, including Illinois, municipal corporations may be sued under state law for misconduct by their policemen. See Appendix C hereto.

We submit that holding municipal corporations liable for the misconduct of their policemen is desirable policy

because (1) judgments against policemen may be of no value to the injured party in that policemen may be "judgment-proof" and exempt from garnishment,[6] and (2) the threat of liability may induce municipalities to show genuine concern to reduce police misconduct.[7] We do not ask this Court to adopt these notions of policy. We simply ask that in states which have already chosen to hold municipalities liable for police misconduct, the injured party, if he invokes the protection of the federal Civil Rights Act, should be free to prosecute all his claims arising out of the single occurrence in *one action* in the federal court.

It is clearly in the interest of judicial economy and substantial justice to avoid a multiplicity of actions for essentially the same claim. The whole purpose of the doctrine of pendent jurisdiction is to avoid the burden upon the parties of superfluous litigation. Furthermore, without the inclusion of the Village of Niles as a party in this matter, a judgment in favor of the police officers on the state counts would be binding in favor of the Village in the courts of Illinois. *Bigelow* v. *Old Dominion Copper Mining & Smelting Co.*, 225 U.S. 111 (1912), *Good Health Dairy Products Corp.* v. *Emery*, 275 N.Y. 14 (1937).

In *Hardwick* v. *Hurley*, 289 F. 2d 529, 530 (7th Cir. 1961), the court below, reluctantly following the decision of this Court in *Monroe* v. *Pape, supra*, noted with alarm that:

> "A broad interpretation of the Supreme Court's decision in *Monroe* v. *Pape* may well open the flood gates

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[6] "But many policemen are in no position to pay substantial money judgments." *Justice* 71 (1961 United States Commission on Civil Rights Report).

[7] "The Commission's studies indicate that police brutality in the United States today is a serious and continuing problem in many parts of the country." *Justice, op. cit. supra*, 26. See also pp. 70-71.

and bring into the federal trial courts thousands of assault and battery cases that should never be there. In metropolitan areas where many arrests are made daily, cases based upon this kind of claim may well completely jam what are already crowded trial calendars."

Despite the fears of the court below, we believe that the federal district courts throughout the country have been properly applying the civil rights act without having their calendars "completely jammed."[8] Prior to the granting of the motion to dismiss in the instant case in the District Court for the Northern District of Illinois, four other plaintiffs sought to name municipal corporations as defendants in complaints similar to the one filed in the instant case. In these cases four different district judges denied motions to dismiss filed by municipal corporations. See cases cited in footnote 5, *supra*.

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[8] The annual reports of the Director of the Administrative Office of the United States Courts indicate an increase in the number of private civil actions being filed under the Civil Rights Act in the district courts, although it must be recognized that cases involving claims other than those of police misconduct may be filed under this Act. The number of civil actions filed in the district courts under the Civil Rights Act is as follows (figures for the years 1958 through 1960 include cases where the United States was plaintiff):

Year	Page No.	Number of Cases
1958	185 (in 1959 report)	220
1959	185	247
1960	232	280
1961	238	270
1962	196	357
1963	198	424

Victims of police misconduct in other circuits may likewise claim pendent jurisdiction over counts naming municipal corporations as defendants, where state law permits. In the event that this petition for certiorari is denied, it is unlikely that the opinion of the court below will discourage such attempts by plaintiffs in other circuits, and thus the question presented in this petition will be presented in the future in another case. The trend of the cases and statutes set forth in footnotes 5 and 8 and Appendix C shows that the number of such attempts is likely to increase.

Plaintiffs in police brutality cases are usually not in a favorable position to bear the expense and delay of protracted trials, appellate proceedings, and retrials.[9] We submit it is desirable for victims of police misconduct, in states where municipalities are liable for such misconduct, to know whether federal district courts, in cases like the present one, will enforce their rights under state law against the municipality in a single action in the federal court.

In view of the important public and private interests involved in cases where damages are sought for police misconduct, and in view of the frequency of such cases, we submit that it is important that this Court grant this petition, and decide whether municipal corporations can be made defendants in district courts upon claims like those presented in Counts Three, Four, and Five herein. Thus victims of police misconduct will at least know whether they must file separate actions in the federal and state courts.

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[9] "Yet the victims of police brutality and racial violence are predominantly the poor and the powerless." *Justice, op. cit. supra,* 70.

5. This Court has not Clarified the Meaning and Extent of the Doctrine of Pendent Jurisdiction for Thirty-One Years.

With deference, we submit that the criteria for determining the existence of pendent jurisdiction, as stated in *Hurn* v. *Oursler, supra*, are far from clear. The leading commentators show, and this Court certainly realizes, that the decisions of the lower courts purporting to apply the doctrine of *Hurn* v. *Oursler* are impossible to reconcile. One study concludes:

> "However, it is disconcerting to note the numerous instances in which district courts faced with a pendent jurisdiction problem have merely quoted the 'single cause of action' section of the *Hurn* opinion and then concluded without any analysis, that a single cause of action was or was not presented in the case before them. If this judicial reticence has been encouraged by the difficulty of applying the conflicting approaches which the *Hurn* standards of substantiality and interrelation have evoked, confusion has been compounded by the enactment of Section 1338 (b) of the Judicial Code."
>
> Note, *The Evolution and Scope of the Doctrine of Pendent Jurisdiction in the Federal Courts*, 62 Columbia L. Rev. 1018 at 1041-42 (1962).

As another authority concludes:

> "The indefiniteness of the test propounded in *Hurn* v. *Oursler*, with its emphasis on factual identity of varying grounds for recovery as demonstrating that they arise from but a single cause of action, created difficulties for the lower courts. Some judges insisted on virtually complete identity of facts in order to bring the pendent jurisdiction principle into play, while others, with an eye to judicial economy in avoiding piecemeal litigation, believed that merely substantial

identity of facts would suffice." 1 Barron and Holtzoff, *Federal Practice and Procedure* 100 (1960).

As Professor Moore says of a large number of decisions of the lower courts on the subject of pendent jurisdiction:

> "Most, if not all, of these holdings failed to mould federal jurisdiction to the realities of litigation; were of questionable validity when decided, and are doubly so under the Revision Act of 1948." 3 *Moore's Federal Practice* 1817 (2d ed. 1963).

Professor Wechsler says that the *Hurn* formulation

> ". . . has been a source of constant difficulty and has led to close distinctions that hardly seem to have any bearing either on the general values that should govern in the administration of justice or the special value of avoiding federal intrusion in state spheres." Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 Law & Contemp. Prob. 216 at 232 (1948).

The numerous cases cited by the foregoing authorities make clear, we believe, that the lower courts have had great difficulty in consistently and intelligently applying the rule of *Hurn* v. *Oursler*. This confusion, we submit, leads to results like those in the case at bar, where the court below, in apparent conflict with the decisions of this Court, its own prior decisions, and decisions in other Circuits, holds that pendent jurisdiction is lacking even though *identical facts* underlie the federal and state claims.

We submit that this is an appropriate case for this Court to formulate in clear and contemporary terms a test of pendent jurisdiction which, unlike the formulation in the *Hurn* case, can be consistently and intelligently applied in the lower courts.

Part of the trouble with the *Hurn* rule, of course, is the Court's insistence that there be only "a single cause of action." 289 U.S. at 246. "Experience has demonstrated that this phrase, long a stumbling block in the field of pleading, has created equal confusion in the area of pendent jurisdiction." Note, *supra*, 62 Columbia Law Review at 1027.

The Federal Rules of Civil Procedure, which were promulgated after the decision in *Hurn* v. *Oursler*, of course do not employ the term "cause of action." We do not suggest that a legal formulation may become obsolete solely because it employs the term "cause of action." But, we submit that the peculiar difficulties which the lower courts have encountered in applying the *Hurn* formulation largely spring from the difficulty of applying the phrase "cause of action" in the context of modern pleading and joinder of claims.

The *Hurn* formulation allowed the Court below to reach the conclusion—which is untenable under modern concepts of pleading—that more than one cause of action is presented by the single set of facts alleged in Counts One through Five. Judge Swan has said, in noting that the traditional phrase "cause of action" was omitted from the rules, that the modern term claim means "the aggregate of operative facts which give rise to a right enforceable in the courts." *Original Ballet Russe, Ltd.* v. *Ballet Theatre, Inc.*, 133 F. 2d 187 at 189 (2d Cir. 1943).

Does this not mean that in the instant case, where an identical aggregate of operative facts underlies Counts One through Five, the district court has power to adjudicate the plaintiffs' singular claim that they have an enforceable right to recover damages against the Village and its policemen?

The necessity of employing the phrase "cause of action" in deciding questions of pendent jurisdiction leads to results, like those in the case at bar, which are grossly at variance with the flexible and pragmatic treatment which the drafters of the Rules intended to achieve by eliminating this phrase. See 2 *Moore's Federal Practice* 359 (2d ed. 1964).

An opinion by this court is necessary to clarify the doctrine of pendent jurisdiction, and to ensure consistent and intelligent results in the lower courts—to the end that cases like the one at bar, presenting federal and state counts based on *identical facts,* may be tried in one action.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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